

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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SARAH PALIN, an individual,

Plaintiff,

– against –

THE NEW YORK TIMES COMPANY,  
a New York corporation, and JAMES  
BENNET, an individual,

Defendant.

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No. 17 Civ. 4853

Hon. Jed S. Rakoff

ECF Case

**PLAINTIFF’S STATEMENT OF MATERIAL FACTS  
IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

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Plaintiff, Sarah Palin (“Gov. Palin”), by counsel and pursuant to Local Rule 56.1, files this Statement of Material Facts in support of her motion for partial summary judgment against Defendants, The New York Times Company (“The Times”) and James Bennet (“Bennet”) (collectively, “Defendants”), and states as follows:

1. According to *The Times*, the last time it lost a libel suit in the United States was at least the early 1960’s, which suggests some plaintiffs “with a legitimate claim feel too intimidated to even try.” *See* “A Rare Libel Lawsuit Against The Times,” Liz Sayd, New York Times, May 10, 2017 (<https://www.nytimes.com/2017/05/10/public-editor/murray-energy-libel-suit.html>)

2. A number of significant social movements have been spawned online by ordinary citizens without assistance from the press, such as the Arab Spring, Occupy Wall Street, Black Lives Matter, the Woman’s March, March for Our Lives. *See* Vogt Declaration ¶¶ 3-7, Ex. A-E.

3. On May 25, 2020, a 17-year-old girl from Minneapolis altered the course of American history by using Facebook to post a video of George Floyd being murdered by police; as a result of which Darnella Frazier has faced a “media frenzy” and become the target of unfair criticism and backlash. *See* Vogt Declaration ¶¶ 8-9, Ex. F-G.

4. *Martin Luther King Jr.*’s “Letter from Birmingham Jail” was published in 1963. “Harvey Shapiro, an editor at *The New York Times*, had urged King to use his frequent jailing as an opportunity to write a longer defense of his use of nonviolent tactics, and though King did so, *The New York Times* chose not to publish it.” *See* Vogt Declaration ¶¶ 10-11, Ex. H-I.

5. Greta Thunberg, an environmental activist known for her youth and straightforward speaking manner, has become the target of online trolls and harassment. *See* Vogt Declaration ¶¶ 12-14, Ex. J-L.

6. Following the February 14, 2018, shooting at Marjory Stoneman Douglas High School in Parkland, Florida, several of the students who survived the tragedy became advocates for gun control and used social media to spark the March for Our Lives and #NeverAgain movements; as a result of which they have faced online attacks by detractors. *See* Vogt Declaration ¶¶ 15-18, Ex. M-P.

7. “Citizen journalism” refers to public citizens playing an active role in the process of collecting, reporting, analyzing, and disseminating news and information. It was made more feasible by the development of various online internet platforms. New media technology, such as social networking and media-sharing websites, in addition to the increasing prevalence of cellular telephones, made citizen journalism more accessible to people worldwide. Recent advances in new media have started to have a profound political impact. Due to the availability of technology, citizens often can report breaking news more quickly than traditional media reporters. Notable examples of citizen journalism reporting from major world events are, the 2010 Haiti earthquake, the Arab Spring, the Occupy Wall Street movement, the 2014 Ferguson unrest and the Black Lives Matter movement. *See* [https://en.wikipedia.org/wiki/Citizen\\_journalism](https://en.wikipedia.org/wiki/Citizen_journalism).

8. Online social movements are organized efforts to push for a particular goal through the use of new communications and information technologies, such as the Internet. In many cases, these movements seek to counter the mainstream public, claiming there is a wrong that should be righted. Online social movements have focused on a broad range on social and political issues in countries all around the world. *See* [https://en.wikipedia.org/wiki/Online\\_social\\_movement](https://en.wikipedia.org/wiki/Online_social_movement).

9. Twitter has approximately 330 million monthly active users and 145 million daily users. 22% of Americans are on Twitter. 500 million people visit Twitter's website each month without logging in. Roughly 68 million US citizens are monthly active users of Twitter. 83% of the world's leaders are on Twitter. *See* Vogt Declaration ¶ 25, Ex. W.

10. As many as 87% of Americans get their news on mobile devices or computers. *See* Vogt Declaration ¶ 26, Ex. X.

11. More people obtain news from social media than from print newspapers. *See* Vogt Declaration ¶ 27, Ex. Y.

12. Most social media platforms notify users about the risk of online attacks. Twitter's Terms of Service provide: TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE TWITTER ENTITIES SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, OR ANY LOSS OF DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, RESULTING FROM... (ii) ANY CONDUCT OR CONTENT OF ANY THIRD PARTY ON THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF OTHER USERS OR THIRD PARTIES..." Facebook's Community Standards specifically address "False News" (which it will not remove). *See* Vogt Declaration ¶¶ 19-24, Ex. Q-V.

13. False information is rampant online and spreads farther and faster than the truth. *See* Vogt Declaration ¶¶ 23, 28-30, Ex. U, Z-BB.

Dated: June 19, 2020.

/s/ Shane B. Vogt

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### **CERTIFICATE OF SERVICE**

I hereby certify that Plaintiff's Statement of Material Facts in Support of Motion for Partial Summary Judgment was filed electronically on June 19, 2020. This Notice will be sent by operation of the Court's electronic filing system to counsel of record for all parties as indicated on the electronic filing receipt. Parties and their counsel may access this filing through the Court's system.

/s/ Shane B. Vogt

Attorney